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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

KEITH PAUL BIRD,

Plaintiff,

v.

JAMES DZURENDA, *et al.*,

Defendants.

Case No. 2:20-cv-02093-JAD-NJK

**RESPONSE TO PLAINTIFF'S
OPPOSITION (ECF NO. 71) TO
NOTICE OF APPEAL AND
DEFENDANTS' COUNTER-MOTION
TO STAY**

Defendants, Mark Atherton, Jonathan Binder, Willie Clayton, James Dzurenda, Monique Hubbard-Pickett, Julie Williams, Taylor Paryga, Harold Wickham and Brian William, by and through counsel, Aaron D. Ford, Nevada Attorney General, and Chris Davis, Senior Deputy Attorney General, hereby respond to Plaintiff's opposition to notice of appeal and move to stay the proceedings in this case while this case remains on appeal.

I. INTRODUCTION AND BACKGROUND

On October 6, 2023, Defendants filed a timely notice of appeal (ECF No. 67), appealing this Court's order filed on September 8, 2023 (EFC No. 64), partially denying Defendants' Motion for Summary Judgment based on qualified immunity. Upon filing the notice of appeal, this Court was automatically divested jurisdiction,

without the need of any further action by this Court. Accordingly, this Court should stay these proceedings until the appeal is resolved.

II. POINTS AND AUTHORITY

Defendants are entitled to immediately appeal this Court’s order partially denying Defendants’ motion for summary judgment based on qualified immunity. *See Plumhoff v. Rickard*, 572 U.S. 765, 772-73 (2014) (holding that “a pretrial order rejecting a claim of qualified immunity is immediately appealable” under the “collateral order doctrine”). In *Moore v. Brewster*, 96 F.3d 1240, 1246 (9th Cir. 1996), the Ninth Circuit held that by “filing the notice of appeal, [a party] divested the district court of its jurisdiction over the matter.” *See also Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) (explaining that the “filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal”).

The filing of a timely notice of appeal is all that is required to pursue an appeal based on qualified immunity, without any need to request permission from this Court. Once the notice of appeal was filed, this Court was divested of jurisdiction. As this Court lacks jurisdiction while this matter remains on appeal, this Court should stay these proceedings pending a decision from the Ninth Circuit Court of Appeals. *See David v. Betts*, Case No. CV 20-00002 JMS-WRP, 2021 WL 2355391, at *5 (D. Haw. June 9, 2021) (staying all proceeding when issue of qualified immunity was appealed); *Andrade Rico v. Beard*, Case No. 2:17-CV-1402-KJM-DBP, 2019 WL 4127206, at *3 (E.D. Cal. Aug. 30, 2019) (noting that “[o]ther courts have similarly held that the interlocutory appeal on the issue of immunity requires the district court to stay pretrial proceedings” because such a stay “is necessary to give effect to the purposes of the qualified immunity doctrine”).

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1 **III. CONCLUSION**

2 For the forgoing reasons, this Court should stay the proceedings in this case
3 pending a decision from the Ninth Circuit Court of Appeals.

4 Respectfully submitted this 23rd day of October 2023.

5 AARON D. FORD
6 Attorney General

7 By: /s/ Chris Davis
8 CHRIS DAVIS (Bar No. 6616)
9 Senior Deputy Attorney General

10 *Attorneys for Defendants*
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 23rd day of October 2023, I caused to be served a copy of the foregoing, **RESPONSE TO PLAINTIFF'S OPPOSITION (ECF NO. 71) TO NOTICE OF APPEAL AND DEFENDANTS' COUNTER-MOTION TO STAY** via this Court's electronic filing system. Parties who are registered with this Court's electronic filing system will be served electronically. The following were served by U.S. Mail, postage prepaid, to the last known address on file with the Court:

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/s/ Chris Davis
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